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MAY 16 2005

In re Application of
Kenneth H. Crain, et. al.
Application No. 09/812,391
Filed: March 19, 2001
Attorney Docket No. 108292.00004

OFFICE OF PETITIONS
NOTICE

This is in response to the request under 37 CFR 1.27(g)(2), filed January 25, 2005, which is being treated as a request for acceptance of a fee deficiency submission under 37 CFR 1.28.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Finance records reveal that petitioner submitted \$475 for a small entity three month extension of time on August 16, 2004. The record also reveals that on January 25, 2005 petitioner submitted a check in the amount of \$475 to cover the large entity fee deficiency of the three month extension of time. However, effective December 8, 2004, a large entity three month extension of time is listed as \$1,020. Therefore, as authorized in the instant petition, the deficiency of \$70 (\$1020-\$475-\$475) has been charged to petitioner's deposit account.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This file is being referred to Technology Center Art Unit 2173, for review of the amendment filed May 9, 2004.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions
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for Patent Examination Policy